

UNITY OF ENTERPRISE

The Employment Development Department (EDD) administers payroll reporting requirements for the Unemployment Insurance (UI), Employment Training Tax (ETT), Disability Insurance (DI), and Personal Income Tax (PIT) withholding programs in accordance with the California Unemployment Insurance Code (CUIC). Every commercial employer who hires employees to perform services in California and pays accumulative wages exceeding \$100 during a calendar quarter becomes subject to the provisions of the CUIC. Each subject employer is then required to submit a registration form to EDD within 15 days of becoming subject or when there is a change in ownership.

Whenever there is a change in the employer's legal entity or when two or more related businesses have a common ownership and purpose, EDD must determine if the new legal entity constitutes a new and separate employing unit for UI experience rating purposes or if there is a single, continuing employing unit commonly referred to as a *Unity of Enterprise* (UE). If there is not a single, continuing employing unit under the UE principle, the new employing unit will receive a new State employer account number and its own UI reserve account. If it is determined that the original and successor legal entities have a common ownership and purpose, the successor entity will be instructed to report under the original entity's State employer account number and utilize its existing UI reserve account.

There are two types of UE, "Vertical" and "Horizontal." Sections 135.1 and 135.2 of the CUIC establish the criteria for UE determinations.

What is a Vertical Unity of Enterprise?

Section 135.1 defines a "Vertical" UE. This statute states that "A new employing unit shall not be created when there is an acquisition or change in the form or organization of an existing business enterprise, or separable portion thereof, and there is a continuity of control of the business enterprise." A continuity of control would exist if one or more persons or entities controlling a business enterprise remain in control of the business enterprise after a change in the form or organization of an existing entity.

If there is a continuity of control, the employing unit shall continue as one entity for California payroll reporting purposes.

Examples of changes that result in a Vertical UE include, but are not limited to:

- An individual proprietorship, changes to a corporation, a partnership, an association, a limited liability company, or an estate and the original proprietor is a principle in the new form of ownership.
- A general partnership deletes or changes partner(s) or changes to an individual proprietorship, a corporation, an association, a limited liability company, an estate, or the addition, deletion, or change of partners as long as one or more of the original partners retains control over the organization.

Note: The sale of corporate stock does not change the corporation entity so there is no change in the employing unit.

What is a Horizontal Unity of Enterprise?

Section 135.2 defines a "Horizontal" UE. This statute states that "If two or more business enterprises are **united by factors of control, operation, and use**, the director may determine that the business enterprises are actually one employing unit" for California payroll reporting purposes.

When several entities comprise one employing unit per Section 135.2 of the CUIC, the unit retains a single reserve account for all UI activities.

Unity of control exists when the majority interest in or control of each organization is held by one individual, an entity, an association, or some other organization.

Evidence of "control of a business enterprise" includes, but is not limited to:

- 1) Ownership of a majority interest in an organization.
- 2) Ownership of the assets used to conduct the business of the organization.

- 3) Security arrangements or lease arrangements regarding the assets used to conduct the business of the organization.
- 4) An agreement where the form of ownership, stated arrangements, or contract provide for or allow operation of the business enterprise.

Unity of operation is evidenced by central financing, accounting, and management of each business entity which includes, but is not limited to, common management, personnel policies, operating procedures, pricing, collections, and financing.

Unity of use of two or more business enterprises shall be united if they share a general system of operation and the enterprises are organized for common purposes, and each is coordinated with, or is a part of, the entire operation.

Examples of **unity of use** between business enterprises would be:

- One company that manufactures automobiles establishes two additional business entities that contribute to the production of the automobiles, one entity manufacturing large automotive parts and the other manufactures small automobile parts used to produce the automobile.
- Two businesses are established to compliment each other. This would be when one company manufactures automobile parts and a second company produces automobiles, especially if the parts produced by one operation are used by the other operation in the manufacturing of the completed automobile.
- A parent corporation is established to coordinate and account for the manufacturing, sale, and service of a line of products where each function is run by a wholly-owned subsidiary of the Parent Corporation.

Two or more business enterprises are united when they share a general system of operation and control, the enterprises are organized for a common purpose or use, and each is coordinated with, or is a part of, the operation.

When a corporation is a wholly-owned subsidiary of another corporation, it is necessary to look at the day to day operations of the businesses to determine if there is unity of operation, control, and use between the subsidiary and the Parent Corporation. If so, the two corporations would be only one employing unit for California payroll tax purposes. If not, the corporations will be considered to be separate business enterprises for payroll reporting purposes.

Corporations that have virtually the same board of directors and officers (even if the officers have different titles for each different corporation) will normally be considered one employing unit if there is also a **unity of operation and use**.

An employing unit must notify EDD of a horizontal UI request. EDD will review and provide a response.

Additional Information

For information, you may visit EDD's Web site at www.edd.ca.gov or call the Employment Tax Customer Service Office listed in the telephone book under State Government Office, EDD Payroll Tax Information and Assistance.

Please note that UE is applicable to California Employers per the CUIC and that federal law may differ.

Equal Opportunity Employer/Program. Auxiliary services and assistance are available to persons with disabilities.